

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 3, 2021 AGENDA

Subject:	Type:	Submitted By:
LAND ACQUISITION 120 TH AND OLD GILES ROAD	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A public hearing has been scheduled and a resolution prepared authorizing the execution of a purchase agreement to acquire a 1.41 acre parcel generally located at 120th Street and Old Giles Road for an amount not to exceed \$260,000.

FISCAL IMPACT

The FY21/FY22 Biennial Budget provides funding for this proposed acquisition.

RECOMMENDATION

Approval

BACKGROUND

Staff has determined that property acquisition is necessary to complete work on the 120th and Giles Drainage Improvements project anticipated to be bid in FY 2022 as well as for future phases of Giles Road.

Public Works has in final design the 120th and Giles Road Drainage Improvements project to address drainage concerns from the eastern portion of Southport West affecting Old Giles Road and the northern edge of Papio Valley 1 Business Park. These improvements will reduce flooding problems in the affected areas and will also provide a source for soil fill material and a portion of the Right of Way necessary for the contemplated future widening of Giles Road within the vicinity of this parcel. The property has been surveyed, and an appraisal has been completed on the parcel. The purchase agreement is attached for review.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AUTHORIZE AND APPROVE THE PURCHASE OF REAL PROPERTY, PURCHASE AGREEMENT AND FURTHER ACTIONS.

WHEREAS, the owner of a parcel of land at 120th and Old Giles Road ("Property") desires to sell the Property to the City, and the City desires to purchase the Property from the owner.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council find and determine that:

- (i) A purchase agreement for the Property has been presented in form and content attached hereto as Exhibit A and incorporated herein by this reference ("Purchase Agreement"); and
- (ii) The Purchase Agreement provides for a purchase price of \$260,000 for approximately 1.41 acres of land, in addition to other terms and conditions; and
- (iii) Nebraska Statutes, among other provisions, requires that the City Council, before purchasing an interest in real property, authorize the acquisition by action at a public meeting after notice and public hearing; and
- (iv) The City published notice of public hearing on the proposed purchase of the Property, to be held during the regular City Council meeting on August 3, 2021; which notice is hereby approved, and public hearing was held and completed before consideration of this Resolution; and
- (v) All applicable statutory requirements related to the proposed purchase have been satisfied.

BE IT FURTHER RESOLVED, that, in consideration of the foregoing, the Mayor and City Council hereby adopt and approve the Purchase Agreement, subject to any modifications the City Administrator from time to time determines necessary or appropriate, and authorize and approve the purchase of the Property for the amount and on such other terms and conditions as set forth in said Purchase Agreement. Without limiting the foregoing, authorization to purchase the Property shall be subject to timely satisfaction of any conditions set forth in the Purchase Agreement, to the satisfaction of the City Administrator or her designee.

BE IT FURTHER RESOLVED, that the Mayor or City Administrator, or his or her designee, is hereby authorized to take all actions he or she determines necessary or appropriate to perform the Purchase Agreement or carry out the Resolution approved herein.

PASSED AND APPROVED THIS 3RD DAY OF AUGUST 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

STATE OF NEBRASKA
 LOCAL POLITICAL SUBDIVISION
 TOTAL ACQUISITION CONTRACT

Copies to:

1. [N/A]
 2. Owner
 3. Buyer

Project No.: 120th and Giles Total Acquisition
 Control No: N/A
 Tract No.: 1

THIS CONTRACT, made and entered into this ____ day of _____, 2021,
 by and between, GILES 120, LLC, a Nebraska limited liability company
 Address: 2211 Thurston Circle, Bellevue, Nebraska 68005
hereinafter called the OWNER, and the CITY OF LA VISTA, a municipal
corporation in the State of Nebraska, hereinafter called the BUYER.

TOTAL ACQUISITION

1. In consideration of the payment or payments specified below, the OWNER hereby agrees to execute and deliver to the BUYER a warranty deed which will be prepared and furnished by the BUYER for fee simple title to certain real estate described in:

SEE ATTACHED EXHIBIT "A" (the "Property")

2. As the entire consideration for the above described Property, the BUYER agrees to pay to the OWNER the sum of TWO HUNDRED SIXTY THOUSAND and NO/100 DOLLARS (\$260,000.00) upon receipt of a deed from the OWNER and from such sum said OWNER authorizes the BUYER to withhold, deduct and pay on behalf of the OWNER those amounts due and owing for taxes, claims of record, and judgments to claimant, county or city. That the OWNER agrees that payment of the above sum by the BUYER to the OWNER shall relieve the BUYER of all further obligations of claims on this Property and account and any further claims arising shall be the responsibility of the OWNER and the BUYER shall be held harmless by the OWNER on any future claims, taxes or judgments on this Property.

3. The date of execution of this contract shall be the date when the same is signed on behalf of the BUYER as set out below. The closing of the transaction contemplated by this contract shall occur on such date and time as mutually agreed upon by both OWNER and BUYER, which shall be on or before ten (10) days after satisfaction or waiver of each item upon which this contract by its terms is contingent or conditioned (the "Closing" or the "Closing Date"). OWNER shall deliver possession of the Property to BUYER on the Closing Date, at which time the OWNER shall not refuse the BUYER entry or in any way hinder the BUYER from entering. OWNER and BUYER acknowledge and understand that, at Buyer's option, the Closing may be an escrow closing handled by Nebraska Title Company or such other title company or agent selected by BUYER ("Title Company/Escrow Agent").

a. If any other party shall hold any encumbrance against the aforementioned Property at the time of delivery of the deed, such payments as are due under this contract shall be made to the OWNER jointly with the party or parties holding such encumbrance, unless said party or parties holding such encumbrances shall in writing waived his/her right to receive such payment. The OWNER agrees not to further encumber the Property in any manner, nor create any other interests therein, except that OWNER may transfer ownership of the Property to a Nominee to carry out a "like-kind exchange" as described in Section 10 below, or Owner may divide, separate and transfer ownership of the Property by properly recorded deed to one or more members of, or other persons or entities related to, OWNER ("Transferee"), prior to closing if desired (any such transfer pursuant to this subsection 3(a) shall be referred to in this Agreement as a "Permitted Transfer"), and upon notice of such occurrence Buyer will pay the purchase price to each Nominee or Transferee holding title to the Property at closing pursuant to a properly recorded deed; provided, however, if the Property is transferred to more than one Nominee or Transferee, the purchase price will be divided and paid to each such Nominee or Transferee pro rata in proportion to each Nominee's or Transferee's respective ownership interest in the Property. It is expressly understood that time is of the essence in this contract.

b. Rental agreements, modification or extensions of time pertaining to entry or to possession, if any, shall be made by separate written contract and the time and terms of entry or for taking possession set forth in such separate contract shall prevail. Notwithstanding anything in this contract to the contrary, OWNER represents to BUYER that the Property is not subject to any rental agreements, modifications or extensions, or any other encumbrances or liens that are not of record, which representation shall survive and continue in effect through Closing.

4. This contract shall be conditioned upon the happening of each of the following events, which if any of the same have not occurred within the time(s) stated, this contract shall be null and void, and any deposit shall be returned to BUYER.

a. Due Diligence: BUYER will have sixty (60) days after OWNER's acceptance of this offer (the "Inspection Period") to inspect the Property and complete any surveys, engineering, environmental, and such other studies as BUYER in its discretion requires. If BUYER, in BUYER's sole discretion, determines the Property is unsuitable, BUYER may terminate this offer by giving OWNER written notice during the Inspection Period and any deposit thereupon shall be refunded to BUYER. During the Inspection Period, BUYER or BUYER's agents shall have the right to enter upon the Property at reasonable times to perform such surveys, investigations and inspections as BUYER deems necessary or appropriate. BUYER will promptly repair any damages to the Property caused by such investigations and inspections. BUYER will not permit any liens or encumbrances to arise against the Property in connection with such investigations and inspections, and BUYER shall indemnify, defend and hold OWNER harmless from and against any and all loss, liability and costs relating to BUYER's (or BUYER's agents', employees' or representatives') entries, investigations, and inspections of the Property.

b. Board Approval: This contract is contingent upon BUYER providing statutory notice, conducting a public hearing and obtaining approval of this contract by the La Vista City Council within sixty (60) days following OWNER's acceptance below. If the La Vista City Council does not approve this contract, BUYER will provide notice of same to OWNER in writing and this contract thereupon shall become null and void and BUYER shall receive a refund of any deposit.

5. BUYER intends to procure a current owner's title insurance commitment as soon as practicable to insure – in the full amount of the purchase price – that OWNER has marketable title to the Property. Within the latest of fourteen (14) calendar days after receipt of such commitment, fourteen (14) calendar days after receipt of an updated commitment after a Permitted Transfer pursuant to subsection 3(a) above, or fourteen (14) calendar days after BUYER and OWNER both have accepted and signed this contract, BUYER shall notify OWNER in writing of defects, if any, in the title. BUYER agrees that should any title defect(s) exist, OWNER shall have a reasonable time to correct the defect(s), not to exceed 30 days from the date of the notice by BUYER to OWNER of the defect(s). If the title defect(s) is/are not cured within such time period, BUYER at its option may declare this contract null and void and any cash deposit shall be returned to BUYER.

OWNER represents that OWNER has, and that any transferee of the Property pursuant to a Permitted Transfer described in subsection 3(a) shall have, good, valid and marketable title to the Property, in fee simple, and OWNER agrees to convey, and that any transferee shall convey, marketable title to the Property in fee simple to BUYER by warranty deed free and clear of all liens, encumbrances, encroachments and special taxes levied or assessed (except those easements, building and use restrictions, and covenants now of record accepted by BUYER), which representation shall survive and continue in effect through Closing. The cost of the owner's policy of title insurance shall be paid in full by BUYER. OWNER shall cooperate with BUYER and the title insurance company by providing and executing any documents that such insurer reasonably may require for the issuance of such title insurance.

6. Until the BUYER shall take possession and the OWNER or tenant continues to occupy the Property during such period, the OWNER agrees: to keep the Property free of liens, damage and waste during such period; to assign the policy of insurance in force on this Property to the BUYER; to notify such insurance carrier of such assignment.

7. The BUYER agrees to pay all expenses for abstracts of title and other Closing cost, if required, for this Property.

8. This contract shall be binding on both parties, and on their respective successors and assigns, as soon as it is signed by both parties and, in signing this contract, the OWNER places no reliance upon any promises, verbal agreements or understanding except as set forth in this contract. OWNER, prior to Closing and in connection with any Permitted Transfer, may assign this contract to any Nominee or Transferee holding title to the Property at Closing, as indicated by one or more properly recorded deed, in which case each such Nominee or Transferee shall carry out the duties of OWNER and convey the Property to BUYER at Closing.

9. This contract may be executed in more than one copy, each copy of which, however, shall serve as an original for all purposes, but all copies shall constitute but one and the same contract.

10. OWNER's 1031 Exchange. A material part of the consideration to OWNER for selling the Property is that OWNER shall have the option to elect to qualify the transaction as part of a "like-kind exchange" pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. To affect such an exchange, OWNER may assign this Agreement to a nominee or qualified

intermediary of OWNER's choice ("Nominee"). Such an assignment shall be made in writing. Buyer shall receive notice of such assignment and agrees to accept assignment and to reasonably cooperate with OWNER and/or the Nominee in connection with qualifying the transaction as part of a "like-kind exchange" pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that Buyer shall not be required to accept title to any other or additional property or to incur any additional costs, expenses, liability or obligation with respect to such a 1031 exchange. Nothing stated herein shall be deemed to amend, change or modify either party's rights or obligations under this Agreement other than to accept performance by such Nominee that complies with the requirements hereof. The parties agree that OWNER shall be solely responsible for determining and carrying out proper tax treatment of transactions in connection with this Agreement in accordance with applicable state or federal laws, regulations, or other guidance; the enforceability of this Agreement by either party is not contingent upon qualification for a "like-kind exchange" pursuant to Section 1031 of the Internal Revenue Code of 1986, amended; and that OWNER unconditionally guarantees to the full and timely performance by its Nominee of each and every obligation under this Agreement to be performed by such Nominee, which guarantee along with any agreement to indemnify, defend, or hold harmless shall survive any closing.

REMARKS

THIS IS A LEGAL AND BINDING CONTRACT - READ IT.

The representative of the BUYER, in presenting this contract has given me a copy and explained all its provisions. A complete understanding and explanation has been given of the terminology, phrases, and statements contained in this contract. It is understood that no promises, verbal agreements or understanding, except as set forth in this contract, will be honored by the BUYER.

OWNER: Giles 120, LLC
A Nebraska Limited Liability Company

BY: Martin Giff Martin Giff, Managing Partner

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF NEBRASKA

)
) ss.
)

COUNTY OF SARPY

33.

Dated this _____ day of ___, 2021, before me, a General Notary Public duly commissioned and qualified, came Martin Giff, Managing Partner of Giles 120, LLC, a Nebraska Limited Liability Company, to me personally known to be the respective officer of said Limited Liability Company and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his respective voluntary act and deed as such officer and the voluntary act and deed of said Limited Liability Company.

WITNESS my hand and Notarial Seal the day and year above written.

(S E A L)

NOTARY PUBLIC

BUYER: City of La Vista,
A Municipal Corporation in the State of Nebraska

BY: _____

STATE OF NEBRASKA)
COUNTY OF SARPY)
) SS
)

Dated this _____ day of _____, 2021, before me, a General Notary Public, duly commissioned and qualified, personally came Douglas D. Kindig, Mayor of the City of La Vista, a Municipal Corporation in the State of Nebraska, to me known to be the identical person(s) whose name(s) affixed to the foregoing instrument as buyer(s) and acknowledged the same to be a voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.
(S E A L)

NOTARY PUBLIC

EXHIBIT "A"

A TRACT OF LAND LOCATED IN THE SOUTHEAST ONE QUARTER (SE1/4) OF SECTION EIGHTEEN (18), TOWNSHIP FOURTEEN (14) NORTH, RANGE TWELVE (12) EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION EIGHTEEN (18), THENCE SOUTH 87 DEGREES 15 MINUTES 02 SECONDS WEST (ASSUMED BEARING) FOR 32.90 FEET ALONG THE SOUTH LINE OF THE SOUTHEAST ONE QUARTER (SE1/4) OF SAID SECTION EIGHTEEN (18); THENCE NORTH 02 DEGREES 44 MINUTES 58 SECONDS WEST FOR 33.00 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 87 DEGREES 15 MINUTES 02 SECONDS WEST FOR 511.92 FEET ALONG A LINE 33.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST ONE QUARTER (SE1/4); THENCE EASTERLY ALONG A 4,759.24 FOOT RADIUS CURVE TO THE LEFT HAVING AN ARC DISTANCE OF 114.13 FEET (CHORD BEARING NORTH 61 DEGREES 53 MINUTES 36 SECONDS EAST, 114.13 FEET); THENCE EASTERLY ALONG A 5,760.54 FOOT RADIUS CURVE TO THE LEFT HAVING AN ARC DISTANCE OF 306.72 FEET (CHORD BEARING NORTH 59 DEGREES 39 MINUTES 36 SECONDS EAST, 306.68 FEET); THENCE SOUTH 60 DEGREES 00 MINUTES 26 SECONDS EAST FOR 163.23 FEET; THENCE SOUTH 02 DEGREES 34 MINUTES 16 SECONDS EAST FOR 102.64 FEET ALONG A LINE 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST ONE QUARTER (SE1/4) TO THE POINT OF BEGINNING, ALSO KNOWN AS TAX LOT 15.

AND TOGETHER WITH A TRACT OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION EIGHTEEN (18), TOWNSHIP FOURTEEN (14) NORTH, RANGE TWELVE (12) EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION EIGHTEEN (18), THENCE SOUTH 87 DEGREES 15 MINUTES 02 SECONDS WEST (ASSUMED BEARING) ALONG THE SOUTH LINE OF SECTION EIGHTEEN (18) FOR 44.68 FEET; THENCE NORTH 78 DEGREES 41 MINUTES 51 SECONDS WEST 45.57 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 733.00 FEET, AN ARC LENGTH OF 179.77 FEET, AND A LONG CHORD BEARING NORTH 85 DEGREES 43 MINUTES 24 SECONDS WEST FOR 179.32 FEET TO A POINT ON ROAD RIGHT-OF-WAY BEING 33.00 FEET NORtherly OF THE SOUTH LINE OF SECTION EIGHTEEN (18); THENCE ALONG ROAD RIGHT-OF-WAY ON THE FOLLOWING TWO (2) COURSES: (1) NORTH 87 DEGREES 15 MINUTES 02 SECONDS EAST 233.97 FEET; (2) THENCE NORTH 02 DEGREES 34 MINUTES 16 SECONDS WEST ALONG A LINE 33.00 FEET WESTERLY OF THE EAST LINE OF SECTION EIGHTEEN (18) FOR 102.64 FEET; THENCE SOUTH 60 DEGREES 00 MINUTES 26 SECONDS EAST 39.15 FEET TO THE EAST LINE OF SECTION EIGHTEEN (18); THENCE SOUTH 02 DEGREES 34 MINUTES 16 SECONDS EAST 114.46 FEET TO THE POINT OF BEGINNING.